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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,273	02/09/2001	Barrie R. Froseth	869.018US1	8033

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/780,273

Applicant(s)

FROSETH ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 84-95,99,102,106,109-111 and 113-127 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 84-95,99,102,106,110,111 and 113-127 is/are rejected.
- 7) ☒ Claim(s) 109 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 28, 2005 has been entered. Claims 84-95, 99, 102, 106, 109-111, 113-127 remain pending.

Claim Objections

2. Claim 109 is objected to because of the following informalities: It depends from a cancelled claim (i.e. claim 9). Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 84-95, 99, 102, 106, 110-111, 113-127 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the

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relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. The Examiner cannot locate support for the following in the originally filed application:

- composition of popcorn snacks (e.g. with or without sweeteners)
- method of customizing/treating/cooking/ popcorn snacks (i.e. it is not known if these are half-products or finished products)
- unpopped popcorn kernels, or any composition containing unpopped kernels
- microwave popcorn
- microwave popcorn in the presence of sucralose, cinnamon, or acesulfame K
- popping popcorn
- popping popcorn in a microwave
- popping popcorn in the presence of sucralose, cinnamon, or acesulfame K
- a microwave package for *popping* (i.e. a package for puffing is disclosed)
- adequate amounts of salt to provide salty tastes
- sweetening effective amounts of sucralose (i.e. sucralose is only used for a cereal base in the specification)
- a sweet and salty popcorn
- popcorn food (i.e. as opposed to popcorn snacks)

6. The support for above is located only in an Amendment filed after the application filing date, and thus cannot be relied on as providing enablement.

The originally filed application is directed to selecting, ordering and distributing a customized a food product, including customizing a food product via the Internet.

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Other concepts disclosed in the originally filed application include: customized food products including popcorn snacks (Page 12), customized products that may be heated (Page 79), the use of a microwave *puffing* package that is *similar* to a bag used for popping popcorn (Amendment to the specification on October 4, 2004) wherein *puffing* is defined as different from *popping* (Page 15), a sweetener for a cereal base includes sucralose (Page 20, line 28 to Page 21, line 4), and additive for a consumer product includes acesulfame K. (Pages 8-9).

7. Claims 84-95, 99, 102, 106, 110-111, 113-127 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a customized popcorn snack, a microwave *puffing* package, a cereal base sweetened with sucralose, it does not reasonably provide enablement for a popcorn (popped or unpopped) or popcorn snacks in the presence of any specific ingredient (such as sucralose), a popcorn (popped or unpopped) or popcorn snacks associated with a microwave popcorn package, and methods of popping a popcorn snack in a microwave in the presence of any other ingredient (especially sucralose) and with or without a microwave package. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. First, the originally filed application does not define "popcorn snacks". "Popcorn snacks" does not suggest the ingredients present with or used to make the popcorn snacks. "Popcorn snacks" does not suggest that the product is either cooked or uncooked, either finished or half-product. Second, the

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originally filed application clearly makes a distinction between "popping" and "puffing", and the only suggestion of utilizing a microwave package for heating is utilizing a microwave "puffing" packaging. Thus, there is nothing in the originally filed application that would suggest to one of ordinary skill in the art to that the microwave puffing package disclosed is for use with "popping", or popping the popcorn snacks. Third, the only mention of sucralose is in association with sweetening a cereal base, there is nothing in the originally filed application that would suggest to one of ordinary skill in the art that the Applicant's disclosure includes adding sucralose to unpopped or popped popcorn.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 91 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following terms are relative: (1) adequate amounts of salt to provide salty tastes, (2) sweetening effective amounts of sucralose, and (3) a sweet and salty popcorn. These terms are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. One of ordinary skill in the art would recognize the quantity actually connected with terms depends on the individual consumer.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 84-86,91-94,99,102,111,114,116 and 126 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ezzat(GB 2250266 A) in view of Google Groups (12/9/199).

12. Ezzat teaches preparing popcorn in microwave oven by placing butter as recited in claims 85 and 93, salt as recited in claim 86 and 94 , sugar and unpopped kernels in a microwave package as recited in claims 84,91,92, 99, and 126 (Page 3, lines 1-23), which would involve opening the package after popping as recited in claim 116. Ezzat is silent in teaching adding a sweetening effective level of sucralose, as recited in claims 84,91 and 99, or cinnamon as recited in claims 102,110,111, and 114.

13. Google Groups teaches how to make a low carbohydrate sweet and salty popcorn by combining commercially available microwave popcorn with sucralose (i.e. Splenda) , as well as cinnamon, to achieve a sweet flavor, such as a caramel flavor (Page 1, 12/9/1999 message). Therefore, it would have been obvious to modify Ezzat and include sucralose, as well as cinnamon in the

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microwave package since Google Groups teach adding sucralose and cinnamon will provide a low carbohydrate, sweet and salted popcorn product.

14. Claims 87, 95, and 113 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ezzat (GB 2250266 A) in view of Google Groups (12/9/199) as applied to claims 84-86, 91-94, 99, 102, 111, 114, 116 and 126 above further in view of Daenkindt (EP335852A)

15. Modified Ezzat teach using a sucralose and cinnamon, in combination with microwave popcorn, but is silent in including acesulfame K. Daenkindt et al. also teach sugar substitutes including sucralose, but further include acesulfame K. Daenkindt et al. teach adding the mixture comprising saccharose, sucralose, and acesulfame K has the same sweetening power as saccharose per unit volume but because some of the saccharose has been substituted with sucralose and acesulfame K, the sugar provides a reduced caloric value (English Abstract, Page 2). Therefore, it would have been obvious to further modify Ezzat and include acesulfame K since Daenkindt et al. teach, sucralose and acesulfame K provides in combination provide the same sweetness per unit volume of saccharose, at a reduced caloric level.

16. Claims 118, 119, 122, 123, 124, 125, 127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ezzat (GB 2250266 A) in view of Google Groups (12/9/199), as applied to claims 84-86, 91-94, 99, 102, 111, 114, 116 and 126 above

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further in view of Brown et al. (US 6618062 B1) and Bebiak et al. (US 6358546 B1).

17. Modified Ezzat teach the popcorn snack is pre-packaged and is silent in teaching allowing the consumer to customizing the product prior to enclosing the popcorn snack using the Internet, as recited in claims 118, 119, 122, 123, 124, 125, 127.

18. Brown et al. teach allowing consumers to customize a food product over the Internet from vendors to maximize customer satisfaction and allow customers to customize a food product based on dietary requirements (Column 1, line 15 Column 2, line 40). Bebiak et al. teach the conventionality of customizing *pre-packaged* food products for the purpose of tailoring a packaged product to correspond to particular dietary requirements (column 1, lines 39-62, Column 2, line 56 to Column 3, line 5).

19. Therefore, it would have been obvious to modify the method of Ezzat to allow the consumer to customize the product using the internet prior to enclosing the popcorn snack because Brown et al. teach having customer to customize a food product via the internet will assure that the vendor will maximize a customers satisfaction and allow the customer to customize based on individual dietary requirements, while Bebiak et al. teaches customizing food products via the internet to meet individual dietary requirements is done for pre-packaged foods as well.

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20. Claims 88-90, 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ezzat (GB 2250266 A) in view of Daenkindt (EP335852A) and Google Groups (12/9/199)

21. Ezzat teaches preparing popcorn in microwave oven by placing butter as recited in claim 89 salt as recited in claim 90, sugar and unpopped kernels in a pouch for one time use for a single user, which would serve as a single serving microwave pouch as recited in claims 88 (Page 3, lines 1-23) which would involve opening the package after popping as recited in claim 117. Ezzat is silent in teaching adding a sweetening effective level of acesulfame K or cinnamon, as recited in claims 88 and 106.

22. Daenkindt et al. also teach sugar substitutes including sucralose, but further include acesulfame K. Daenkindt et al. teach adding the mixture comprising saccharose, sucralose, and acesulfame K has the same sweetening power as saccharose per unit volume but because some of the saccharose has been substituted with sucralose and acesulfame K, the sugar provides a reduced caloric value (English Abstract, Page 2).

23. Google Groups is relied on as evidence of the conventionality of substituting a sugar twin, including sucralose, in combination with microwave popcorn and cinnamon, in order to obtain a low carbohydrate, which would also be low calorie, sweet and salty popcorn with a caramel like flavor (Page 1, 12/9/1999 message).

24. Therefore, it would have been obvious to modify Ezzat and include acesulfame K since Daenkindt et al. teach a blend of saccharose, sucralose

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and acesulfame K provides the same sweetness per unit volume of saccharose, at a reduced caloric level and Google Groups teaches the combination of a saccharose substitute that includes sucralose, and cinnamon with a microwave popcorn composition will provide a low carbohydrate, which would also be low calorie, sweet and salty popcorn with a caramel like flavor.

25. Claims 118,119,122,123,124,125,127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ezzat (GB 2250266 A) in view of Daenkindt (EP335852A) and Google Groups (12/9/199), as applied to claims 88-90,117 above further in view of Brown et al. (US 6618062 B1) and Bebiak et al. (US 6358546 B1).

26. Modified Ezzat teach the popcorn snack is pre-packaged with Acesulfame K and is silent in teaching allowing the consumer to customizing the product prior to enclosing the popcorn snack using the Internet, as recited in claims 120 and 121.

27. Brown et al.. teach allowing consumers to customize a food product over the Internet from vendors to maximize customer satisfaction and allow customers to customize a food product based on dietary requirements (Column 1, line 15Column 2, line 40). Bebiak et al. teach the conventionality of customizing *pre-packaged* food products for the purpose of tailoring a packaged product to correspond to particular dietary requirements (column 1, lines 39-62, Column 2, line 56 to Column 3, line 5).

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28. Therefore, it would have been obvious to modify the method of Ezzat to allow the consumer to customize the product using the internet prior to enclosing the popcorn snack because Brown et al. teach having customer to customize a food product via the internet will assure that the vendor will maximize a customers satisfaction and allow the customer to customize based on individual dietary requirements , while Bebiak et al. teaches customizing food products via the internet to meet individual dietary requirements is done for pre-packaged foods as well.

Response to Arguments

29. Applicant's arguments filed June 28,2005 have been fully considered but they are not persuasive.

30. Regarding, claims 82,88, and 91, it is noted that these claims are actually not part of the originally claimed subject matter as stated by Applicant. These claims were entered after the original filing date of the Application.

31. Applicant asserts that the combination of references at best teaches adding sucralose and/or acesulfame K to the popcorn of Ezzat after heating and that there is no motivation to combine the references to cook popcorn *with* sucralose and/or acesulfame K. Applicant asserts that the combination at best teaches adding sucralose to the popcorn of Ezzat after heating and that there is no motivation to combine the references to cook popcorn *with* sucralose and/or acesulfame K .In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be

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established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

32. With respect to the combination of Ezzat and Google Groups Publication in particular, Ezzat teaches placing sugar in a microwave package with unpopped kernels, heating in the microwave, and making popped popcorn snack with sugar. Google Groups provides motivation to replace sugar used in conventional popcorn recipes with sucralose because one can produce low carbohydrate version of the popcorn snack. It was well known in the art that sucralose is marketed as a sugar substitute suitable for heating and cooking operations. Thus, Google Groups provides motivation to substitute sucralose for the sugar in Ezzat by teaching it is preferred to substitute sucralose in sweetened popcorn recipes, and one of ordinary skill in the art would have had some expectation of success because sucralose is well suited for heating/cooking operations.

33. Similarly, with respect the combination of Ezzat, Daenkindt et al. and Google Groups, Ezzat teaches placing sugar in a microwave package with unpopped kernels, heating in the microwave, and making popped popcorn snack with sugar. Daenkindt et al. provides motivation to substitute sucralose and acesulfame K: provide a reduced calorie sweetener composition option to

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replace sugar, or saccharose, and, without sacrificing sweetness intensity of pure sugar, and Google Groups provide evidence that a reduced calorie, sugar-containing popcorn snack is desired. It was well known in the art that sucralose and acesulfame K are marketed as sugar substitutes suitable for heating and cooking operations. Thus, . Daenkindt et al. provides motivation to substitute sucralose and acesulfame K for the sugar in Ezzat by teaching the combination provides a reduced calorie sweetening alternative to sugar and Google Groups teaches it is preferred to provide reduced calorie popcorn snacks. One of ordinary skill in the art would have had some expectation of success because sucralose and acesulfame K are suitable for heating/cooking operations.


Conclusion

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 8:00AM-4:30PM M-F.

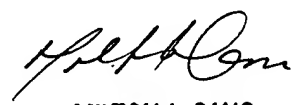
35. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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36. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen 
Examiner
Art Unit 1761

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